

TESTIMONY OF: PHILLIP J. HOLMAN, ESQ.,  
VICE PRESIDENT OF  
DADS AND MOMS OF MICHIGAN PAC

*Amendments Needed To*

**SENATE SUBSTITUTE FOR SENATE BILL NO. 557 (S-2) , 558-560**

*Before:*

THE HOUSE JUDICIARY COMMITTEE  
521 House Office Building, Lansing, MI  
Thursday, 3/15/2012, 10:30 AM

*Oh, what a tangled web we weave  
When first we practise to deceive!*

#### A. Introduction

The Legislative Analysis for Substitute Senate Bill 557-560 (S-2) (as passed by the Senate) states the purpose of this legislation in part as follows:

Under current law... if a child has a presumed father, an alleged father has no standing unless a court has determined that the presumed father is not that child's father. ... An acknowledged father currently may bring an action to revoke the acknowledgment of parentage; **the legislation would retain these provisions [until the child is 3 years old!]** but also allow an alleged father to bring such an action. **[until the child is 3 years old!]** In addition, an affiliated father currently may bring an action to set aside the order of filiation under court rules for setting aside a judgment. In this and the other situations, the proposed Act would create separate legal proceedings, identify who would have standing, and set specific new limits.

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In short, the bills would bring fairness, compassion, and modernity to the law, while ensuring that the child's best interests were the primary consideration.<sup>2</sup> (Emphasis added).

The above Analysis seems to imply that the authors of this legislation are concerned about the loving fathers who are prevented from any contact with their children by a vindictive mother concerned about her own interest rather than the best interest of the child. To the contrary, the proposed legislation:

1. Creates a new and very short time table for fathers to file an action in Court;
2. Seeks to protect mothers who often perpetrated the paternity fraud in the first instance; and
3. Imposes no consequences to mothers who perpetrate paternity fraud on fathers, boyfriends and innocent children.

It was recently announced that for the first time in history, the majority of children born to mothers under the age of thirty (30), were born out of wedlock.<sup>3</sup> Consequently, the Bills under consideration today will govern the parent-child relations of a growing majority of Michigan's children, frequently to parents who lack an adequate education or the financial resources for an attorney.

Another preliminary issue that I would ask this Committee to consider is that these cases consider situations in which the putative fathers in an overwhelming disadvantage. Certainly, the Mother is in the best position to know whether there is any doubt about the identity of the child's biological father. The fathers, often confronted unexpectedly in the hospital with an acknowledgment of paternity to sign is placed in a no-win situation. If he refuses to sign, stating he wants a paternity test, he likely destroys all possibility of even an amicable relationship with

<sup>1</sup> Scott, Walter. *Marmion: A Tale of Flodden Field*, Canto VI, XVII

<sup>2</sup> PATERNITY REVOCATION/ESTABLISHMENT S.B. 557 (S-2) & 558-560: ANALYSIS AS PASSED BY THE SENATE. Legislative Analyst: Suzanne Lowe

<sup>3</sup> For Women Under 30, Most Births Occur Outside Marriage, New York Times, February 17, 2012

the mother, much less a continuing relationship or marriage. The form does not require the mother to even represent that there are no other possible fathers, leaving her to select the father of her choice among the available alternatives. Given such uneven positions, for the law to aid and reward the mother in perpetrating a fraud on the putative father is unconscionable.

The Bill uses one phrase that merits clarification:

“an affiliated father has failed to participate in the court proceedings that determined filiation” means fathers who were determined to be the father because they failed to appear in Court. Importantly, no actual notice of the hearing is required. Numerous men are served by alternate service, which can be as inadequate as publication in a local legal newspaper. I don’t know about other communities, but in Detroit, I rarely see 16-year-old boys reading the Detroit Legal News.

It is important to realize that what is being considered in allowing acknowledgment of paternity forms to be questioned is primarily allowing men partial relief from the extortion of funds procured by paternity fraud. This legislation fails to remove barriers blocking loving fathers from being allowed a day in court and an opportunity to tell the judge how much they love their children and want to be (or remain) an active part of their children’s lives.

**B. Analysis of Specific Provisions: SENATE BILL NO. 557 (S-2)**

1. Section 7 of the proposed Revocation of Paternity Act (the “Act”) relates to revocation of an acknowledgment of paternity. Page 2, Lines 20-23, Sec. 7. (1) provides:

An action under this section shall be filed within 3 years after the child’s birth or within 1 year after the date that the acknowledgment of parentage was signed, whichever is later.

This provision sets up a Statute of Limitations for seeking to set aside an acknowledgement of filiation. Current law, MCL 722.1011, Acknowledgment of parentage; claim for revocation, contains virtually identical language with no 3 year limitation period. Although there is limited ability for late filing (which is discussed subsequently) there seems to be little if any compelling reason for this limitation.

Questions to consider:

- a. Should a woman who perpetrates a fraud on a man by telling him he was the only possible father be rewarded by being able to collect child support for 18 years if she is able to maintain the illusion for three years?
- b. Should a father who was told he was not the father be denied a loving and involved relationship with his child merely because he failed to have the mother’s acknowledgment of paternity with another man set aside before the child turns three?
- c. What if the father in Example b is unaware that there is an acknowledgment of paternity?
- d. What if the father in Example c lives with the mother and seeks to enforce his relationship with his child when the mother gets angry at him and moves out?

2. Section 9 of the proposed Revocation of Paternity Act (the "Act") relates to set aside a paternity determination when "a child has an affiliated father and paternity was determined based on the affiliated father's failure to participate in the court proceedings...." Page 4, Lines 10-14, Sec. 9. (2) provides:

A motion under this section shall be filed within 3 years after the child's birth or within 1 year after the date of the order of filiation, whichever is later.

As indicated above, there are numerous reasons why a father may fail to attend a paternity hearing, including failure to receive actual notice. It is hard to imagine why a three year limitations period would be appropriate, much less in the best interest of the minor child. There is no policy reason being upheld, such as a desire not to disturb a happy intact family. Moreover, there is little ability in today's world to keep the father from obtaining a DNA test; they merely require an unintrusive swipe with a cotton swab, are readily available and relatively cheap.

Page 4, lines 10-14, Sec. 9. (2) requires the Court to impose costs and attorney fees on the individual who filed the motion if the order of filiation is not set aside. This might be warranted where the putative father received actual notice, otherwise not. Moreover, one would expect that this legislation would be more even handed and either:

- a. Impose costs and attorney fees on the Mother if the falsely accused putative father prevails;
- b. Allow the court to award costs on any party; or
- c. Eliminate the provision. This section appears unnecessary in light of Section 13 (11) on p. 11 which authorizes the Court to require a nonprevailing party to pay costs and attorney fees.

3. Section 11 of the Act relates allows Courts to determine a child is born out of wedlock for purposes of establishing the child's paternity. The disparate treatment of mothers and fathers based on gender would seem to violate constitutional protections and serves to reward the perpetrator of the fraud, rather than protect the innocent victims.

Where the Mother files the action, there are two alternative tracks, each of which contain provisions which make little sense.

**Action by the Mother (p. 4-5)**

**Under the first track, all of the following must apply:**

- a. The mother must name the father (sadly, this often is not possible);
- b. The paternal relationship between the child and the biological father must have been an openly acknowledged relationship;
- c. "The action is filed within 3 years after the child's birth..." ; and
- d. The child's paternity will be established (sadly, this often is not possible).

Where the relationship between the father and child is openly acknowledged by all parties, what possible reason could there be for limiting a parties' ability to bring an action? Moreover, why should the Mother not be allowed to acknowledge that her husband was not the biological father of her child, just because she is unable or unwilling to identify the father?

**Under the second track, all of the following must apply:**

- a. The mother must name the father (sadly, this often is not possible);
- b. Either of the following apply:
  - i). The presumed father is not paying child support as ordered; or
  - ii). The child is less than three years old and the presumed father lives apart from the child; and
- c. The child's paternity will be established (sadly, this often is not possible).

**Action by Presumed Father (i.e., the mother's husband) (p. 5-6)**

Where the presumed father files the action, the court may only make such determination if it is filed before the child turns three or if raised in a divorce proceeding.

If a husband is allowed to raise the paternity of a ten year old child in a divorce proceeding, why should he not be allowed to raise the issue when he finds out years after his wife divorced him and refused to allow him any access to his child? Clearly this does not reflect a concern for the impact on the child, or the results would be the opposite.

**Action by the Alleged Father (i.e., the alleged biological father)(p. 6-7)**

Where the Alleged Father files the action, there are three convoluted alternative tracks, each of which contains provisions, which make little sense.

**Under the first track, all of the following must apply:**

- a. The father did not know the mother was married when the child was conceived;
- b. The paternal relationship between the child and the biological father must have been an openly acknowledged relationship;
- c. "The action is filed within 3 years after the child's birth..."; and
- d. The child's paternity will be established if the child is determined to be born out of wedlock.

What the drafters perceived the public policy reasons for the first two requirements are difficult to imagine. However, they provide little if any reason to prevent a biological father from asking a judge to allow him to obtain or continue a loving relationship with his child. Since the Alleged Father by definition is seeking a determination of paternity, the fourth requirement appears superfluous, other than for a desire to appear to provide a similar rule for fathers and mothers.

**Under the second track, all of the following must apply:**

- a. The father did not know the mother was married when the child was conceived;
- b. Either of the following apply:
  - i). The presumed father is not paying child support as ordered; or
  - ii). The child is less than three years old and the presumed father lives apart from the child; and
- c. The child's paternity will be established if the child is determined to be born out of wedlock.

In this alternative, if the biological father's relationship with the child has not been openly acknowledged by all the parties which is required under the first alternative, the biological father is given standing if the presumed father is not paying support or he and the mother are separated and the child is less than three years old.

**Under the third track, all of the following must apply:**

- a. The mother was not married when the child was conceived; and
- b. The action is filed before the child is three years old.

In this alternative, if the mother was not married when the child was conceived, the action must be brought before the child is three years old. This eliminates the biological father's right under current law to bring an action once there is no longer a marriage that the law presumes will be adversely impacted by the biological father's claim.

**Action by the Department of Human Services p. 7-8)**

Where the child has a presumed father and is being supported by public assistance, the Department of Human Services may file an action if both of the following apply:

- a. Either of the following apply:
  - i). The presumed father is not paying child support as ordered; or
  - ii). The child is less than three years old and the presumed father lives apart from the child; and
- b. The child's paternity will be established if the child is determined to be born out of wedlock.

Thus, for the first three years, the Department of Human Services is given *carte blanche* to file an action, regardless of any public policy reason that may exist that would suggest such an action would be detrimental to the child. After the child is three years old, the Department of Human Services is given *carte blanche* if they are not being reimbursed for their welfare payments in whole or part by the presumed father.

It is ironic that any public policy reasons that may exist disappear if the Department of Human Services is adversely impacted financially, but little sympathy is given to a father who has been the victim of a cruel paternity fraud.

**No Termination of Adoptions (p. 11)**

Section 13 (8) provides that the Act does not provide a basis for termination of an adoption. Thus, since the Act will provide the only basis for setting aside an acknowledgment of paternity, the mother is encouraged to circumvent the biological father by filing a fraudulent acknowledgment of paternity naming her "friend" as the father and having her "friend" agree to the adoption.

In addition, an affiliated father currently may bring an action to set aside the order of filiation under court rules for setting aside a judgment.

**Extension of Time for Filing Under the Act (p. 11-12)**

The crux of the burden imposed on parties wishing to bring an action after a child is three years old is the "burden of proving by clear and convincing evidence that granting relief under this act will not be against the best interests of the child considering the equities of the case." See Section 13 (13) of the Act on p. 12.

One concern with this provision is the confusing use of the phrase "best interests of the child" which is a term in the Child Custody Act used to compare parents seeking custody. See MCL 722.23 "Best interests of the child" defined, Child Custody Act Of 1970, Act 91 of 1970.

Secondly, if this burden is applied as written in the Act, it is an impossible task, to show by clear and convincing evidence that there will not be any detrimental impact to the child. Moreover, it is far from clear that this standard is the correct one to apply. For example, if a mother fraudulently induces a man to sign an acknowledgment of paternity, should she be rewarded by being allowed to collect 14 more years of child support merely because her charade is not discovered before the child is three years old? Should the child's loss of support if the father is able to revoke his acknowledgment of paternity prevent him from being able to do so? Similarly, if a man is never actually notified of a paternity action and deemed to be a child's father by default, should he be prevented from proving he is not the father because the child would be worse off if he fails to continue to pay the child support being improperly extorted by the mother? In such cases, the father is extremely unlikely to receive any assistance from the mother father who perpetrated the paternity fraud in identifying the biological father. Consequently, he will be at an extreme disadvantage compared to the mother.